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August 9, 2006

To: Mayor Michael D. Antonovich
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Supervisor Don Knabe

From: David E. Janssen
Chief Administrative Officer

SACRAMENTO UPDATE

Pursuit of County Position on Conservatorship Reform Legislation

In November 2005, the Board instructed my office to convene a task force to study and report back on conservator abuse issues and also instructed my office to promote legislation to require licensing and monitoring of conservators. My office's February 2006 report on this issue included the status of legislative proposals being considered by the Legislature to reform the conservatorship process.

The reform legislation was recently packaged into four bills currently being considered by the Legislature: **AB 1363 (Jones)** which would expand the oversight of conservators and establish a State Conservatorship Ombudsman; **SB 1116 (Scott)** which would limit a conservator's ability to sell a conservatee's personal residence; **SB 1550 (Figueroa)** which would establish licensing requirements for professional guardians, conservators, and trustees; and **SB 1716 (Bowen)** which would allow the Probate Court to act on ex parte communication regarding the performance of a conservator and expand the scope of reviews conducted by court investigators. These bills are joined and would become operative effective January 1, 2007, only if all four are enacted.

AB 1363 (Jones), as amended on August 7, 2006, would enact the Omnibus Conservatorship Reform Act of 2006 to expand and enhance the Probate Court's oversight of conservatorships and ensure the health and safety of persons placed under conservatorship. To accomplish this, AB 1363 would:

- 1) require the Judicial Council to establish qualifications for Probate Court staff and develop a training program for nonprofessionals who seek appointment as court-appointed guardians or conservators;
- 2) require Probate Court investigators to visit conservatees six months after the initial appointment of the conservatorship and annually thereafter to determine that the conservatorship is still warranted;
- 3) increase reviews of the conservatorship by the Probate Court from once every two years to annually and allow the Court to schedule subsequent reviews every two years if the court determines that the conservator is acting in the best interest of the conservatee;
- 4) authorize the Probate Court to review the conservatorship at any time if deemed necessary to ensure the safety of the conservatee;
- 5) expand the list of persons required to receive conservatorship notices;
- 6) strengthen reporting, accounting, and auditing requirements of a conservatee's assets;
- 7) require the Probate Court to immediately suspend or remove a guardian who submits an erroneous accounting of a conservatee's assets; and
- 8) limit compensation to the guardian or conservator.

AB 1363 would also establish the Office of the Conservatorship Ombudsman within the State Department of Consumer Affairs. The Ombudsman would establish a statewide reporting system to take complaints regarding conservators. The complaints would be reviewed to determine if they require an investigation and then be referred to the relevant court, Judicial Council, Attorney General or local Adult Protective Services (APS) office for investigation. Local agencies receiving referrals from the Ombudsman would be required to take all appropriate steps to resolve the complaint and then send a report back to the Ombudsman regarding the action taken.

In addition, the bill would increase responsibilities of the Public Guardian. Under current law, the Public Guardian may apply for appointment as a guardian or conservator when no one is willing or qualified to act for the conservatee. AB 1363 would require the Public Guardian to apply for appointment as a conservator or guardian if there is an imminent threat to a person's health or safety or to a person's estate. The bill would also require the Public Guardian to begin an investigation within two business days of receiving a referral for conservatorship or guardianship.

AB 1363 would significantly enhance the oversight of conservators, and thereby increase the health and safety of vulnerable adults placed under conservatorship; however, the bill would result in an increased, unfunded workload for the Public Guardian, County Counsel and APS staff. The Los Angeles County Public Guardian estimates increased annual cost of \$1.8 million to provide guardianship for persons determined to be at imminent threat of health or safety, and to initiate investigations within two business days of receiving a referral from the Probate Court. The County Counsel would also incur unquantifiable increased costs for these provisions.

According to the Department of Community and Senior Citizens (CSS), APS may become a "catch all" for referrals coming from the State Ombudsman's office because it is unclear how this office could accurately determine which local agency is best suited to resolve a complaint. This could increase the number of APS referrals with no corresponding increase in funding.

During the State budget hearings in May 2006, the Assembly Health and Human Services Budget Subcommittee added \$5 million to fund Public Guardian costs for AB 1363 activities; however, this funding was eliminated by the Budget Conference Committee.

The Public Guardian, County Counsel and CSS support AB 1363 because it addresses many of the serious problems in the current conservatorship process; however, because the bill does not include a funding source for increased workload, the Departments recommend that the County support AB 1363 if amended to fund County costs, and we concur. Consistent with existing Board policy to support proposals which require the licensing, oversight and regulation of conservators, establish a Probate Ombudsman Program, and provide sufficient resources to conduct investigations of conservators through the Probate Court and the Public Guardian Program, **our Sacramento advocates will support AB 1363 if amended as indicated above.**

AB 1363 is co-sponsored by Bet Tzedek Legal Services, the California Alliance for Retired Persons and the Older Women's League. The bill is supported by the Attorney General, California AARP, California Commission on Aging, California for Disability Rights, Inc., California Seniors Coalition, Contra Costa County Advisory Council on Aging, Elder and Dependent Adult Abuse Prevention Council of Santa Barbara County, Gray Panthers, California Chapter of the National Association of Social Workers, Retired Public Employees Association, San Joaquin County Commission on Aging, and California Adult Services Policy Council of San Luis Obispo County. The California State Association of Public Administrators, Public Guardians, and Public Conservators supports AB 1363 if amended to appropriate funds to cover implementation and administrative costs of County Public Guardians. The bill is opposed by the Madera County Board of Supervisors and Trusts and Estates Section of the State Bar of California.

AB 1363 was placed on the Senate Appropriations Committee Suspense File on August 7, 2006.

SB 1116 (Scott), as amended on August 7, 2006, would limit a conservator's power to sell a conservatee's personal residence. The bill would create a presumption that, in the absence of contradictory evidence, the personal residence of a conservatee is the least restrictive environment. Upon appointment, the conservator would be required to determine the appropriate level of care for the conservatee, including measures needed to keep the conservatee in his or her personal residence. This determination must be

made in writing under penalty of perjury. Should the conservatee require a change in residence, the conservator would be required to:

- 1) file a notice of change of address for the conservatee with the Probate Court within 30 days;
- 2) seek authorization from the Probate Court to sell a conservatee's personal residence and inform the court why other alternatives including, but not limited to, in-home care are not available;
- 3) demonstrate that the sale of the personal residence is in the best interest of the conservatee;
- 4) comply with rules regarding appraisal of the property and sale at minimum price offer; and
- 5) serve a copy of the final escrow settlement to all persons entitled to receive notice and submit proof of service to the court within 15 days of the close of the escrow.

Proponents of SB 1116 indicate the bill will help ensure that conservatees are placed in the least restrictive appropriate environment and enhance the courts' oversight of sales involving a conservatee's personal residence.

The Los Angeles County Public Guardian opines that the requirement to determine a conservatee's appropriate level of care and prepare a written report under penalty of perjury may result in a minimal increased workload at an estimated annual net county cost of \$220,000 for one fulltime Senior Deputy Public Conservator. For this reason, the Public Guardian recommends that the County support SB 1116 if amended to provide funding to cover the increased net county cost, and we concur. Consistent with existing Board policy to support proposals which require the licensing, oversight and regulation of conservators, and provide sufficient resources to conduct investigations of conservators through the Probate Court and the Public Guardian Program, **our Sacramento advocates will support SB 1116 if amended as indicated above.**

SB 1116 is supported by the California AARP, California Alliance for Retired Americans, Gray Panthers, Judicial Council, the National Association for Social Workers, Protection & Advocacy, and the San Joaquin County Commission on Aging. There is no registered opposition on file.

SB 1116 passed the Assembly Appropriations Committee on August 9, 2006, by a vote of 13 to 0, and now proceeds to the Assembly Floor.

SB 1550 (Figueroa), as amended on August 7, 2006, would establish a State board within the California Department of Consumer Affairs to license and regulate professional fiduciaries which would include private conservators, guardians, and trustees. The bill would require professional fiduciaries to submit to a criminal background check, pass a licensing test, complete pre-licensing education, and

continuing education as a condition of receiving and renewing a license. Licensees would be subject to disciplinary actions or sanctions for violating a regulation or the Professional Fiduciary's Code of Ethics. Public guardians and conservators would be exempt from the State licensure and regulatory requirements.

CSS notes that as the aging and dependent adult population grows, more non-family individuals will be called upon to manage their affairs and that standards of professionalism and accountability are needed not only to protect vulnerable adults in conservatorship, but to enhance their quality of life. The Public Guardian, County Counsel and CSS recommend a support position on SB 1550, and we concur. Consistent with existing Board policy to support proposals which require the licensing, oversight and regulation of conservators, **our Sacramento advocates will support SB 1550.**

SB 1550 is sponsored by the Professional Fiduciary Association of California and supported by the California Association of Homes and Services for the Aging and the Judicial Council of California. SB 1550 is opposed by the California Society of Certified Public Accountants, Society of California Accountants, Trusts and Estates Law Section of the State Bar of California and over 150 public accountants.

SB 1550 passed the Assembly Business and Professions Committee on June 29, 2006, by a vote of 7 to 1, and now proceeds to the Assembly Appropriations Committee.

SB 1716 (Bowen), as amended on June 27, 2006, would: 1) allow the Probate Court to conduct an investigation or take other appropriate action on reports of a conservator's performance received through ex parte communication; 2) give the Probate Court authority to review a conservatorship at any time deemed necessary, in addition to the required reviews; and 3) require court investigators to evaluate the conservatee's placement, quality of care, including physical and mental treatment, and finances when determining if the conservator is acting in the best interest of a conservatee.

The author of SB 1716 notes that the goal of SB 1716 is "to prevent financial abuse and neglect of elderly and disabled people who are being cared for by a conservator by giving the court the ability to improve its oversight of conservatorships."

CSS indicates that the bill grants the Probate Court additional tools to protect persons placed in conservatorship, and that enforceable oversight and monitoring of conservators is needed to protect conservatees and provide due process against unethical conservators. The Public Guardian, County Counsel and CSS recommend a support position on SB 1716, and we concur. Consistent with existing Board policy to support proposals which require the licensing, oversight and regulation of conservators, **our Sacramento advocates will support SB 1716.**

SB 1716 is supported by the California Advocates for Nursing Home Reform, California Judges Association, and the National Association of Social Workers, California Chapter. The Judicial Council supports SB 1716, if funding is appropriated. Protection and Advocacy supports SB 1716, if amended to mirror the conservator duties contained in AB 1363. There is no registered opposition to the bill.

SB 1716 was placed on the Assembly Appropriations Committee Suspense File on August 9, 2006.

Pursuit of County Position on Legislation

AB 1920 (Chan), as amended on August 7, 2006, would extend the distribution methodology for payments made to public hospitals for an additional one year under the Medi-Cal Hospital Financing Waiver.

Existing law, established by County-supported SB 1100 (Perata, Chapter 560 of 2005), allocates growth funding between public and private hospitals on a 60/40 basis, respectively, in years 1 and 2 of the Medi-Cal waiver, and allocates for one year only (Fiscal Year 2005-06), 70 percent of growth funding available to all public hospitals with the remaining 30 percent distributed to public hospitals which are "donors" with respect to overall certified public expenditures. AB 1920 would extend the public hospital distribution for an additional year, Fiscal Year 2006-07.

According to the Department of Health Services (DHS), extension of the public sector distribution, as reflected in AB 1920, was the product of a negotiation with other public hospitals in the State, and will allow it to maximize Medi-Cal revenues under the waiver. DHS recommends support for AB 1920, and we concur. Consistent with general Board policy to protect the County's Medi-Cal hospital funding, **our Sacramento advocates will support AB 1920.**

AB 1920 is sponsored by the California Association of Public Hospitals, and supported by, among others, the California Hospital Association, the California State Association of Counties, and Santa Clara County. There is no registered opposition. The bill is awaiting Senate Floor action.

AB 3026 (Lieber), is currently a bill relating to workers' compensation medical benefits. Our Sacramento advocates have obtained proposed amendments to this bill that are expected to be in print shortly. The proposed amendments are similar to **County-opposed SB 1815 (Romero)** which would, among other provisions, exempt peace officers from certain elements of the workers' compensation reform enacted by County-supported SB 899 (Poochigian) in 2004.

Under current law, employers are required to promptly provide reasonable and necessary medical treatment for the injured employee to cure and relieve the effects of

a work related injury. If the employer unreasonably delays or denies necessary medical treatment, the employer is subject to significant penalties which can be as much as \$400,000. Current law also provides that the employer may require the employee to receive treatment from a physician who is a member of a medical provider network (MPN) approved by the employer and certified by the State Division of Workers Compensation. Further, under current law, reasonable medical treatment is presumed to be consistent with guidelines adopted by the American College of Occupational and Environmental Medicine (ACOEM).

The proposed amendments to AB 3026 provide that peace officers who suffer work related injuries would not be limited to treatment from physicians within the approved MPN, and may receive treatment from any physician they choose within a reasonable geographical area. Further, the bill specifies that the employer may not use the ACOEM Guidelines to delay, dispute, or limit any medical treatment provided after 90 days from the date of injury.

The use of an approved MPN and the application of the ACOEM Guidelines to define the scope and extent of reasonable medical care are important elements of the workers' compensation reform contained in SB 899. AB 3026 would essentially repeal these reform measures for peace officers.

According to CAO Risk Management staff, there is no meaningful evidence that the use of an MPN, or the application of the ACOEM Guidelines to define reasonable medical care, is resulting in unreasonable delays or denials of medical care for employees in general, or for peace officers specifically. In addition, the cost to the County in repealing these reform measures for peace officers would be more than \$15 million per year. Consistent with general Board policy to oppose legislation that increases the County's workers' compensation costs and its support for SB 899, **our Sacramento advocates will oppose AB 3026 as proposed to be amended.** The bill is awaiting Senate floor action.

SB 246 (Figueroa), as amended on June 19, 2006, would exempt a hospital from tissue bank licensure regulations for collecting, processing, storing, or distributing human milk collected from a mother exclusively for her own child. It would prohibit any screening tests from being required to be performed on human milk collected for these purposes, require the California Department of Health Services (CDHS) to assess hospital practices for collecting human milk, and clarify that the bill does not apply to any hospital that collects milk from human milk banks or other outside sources.

Under existing law, a hospital that permits a mother to store her milk for her own baby in a hospital refrigerator must obtain a tissue bank license issued by the CDHS. According to the author, California law discourages the feeding of breast milk to infants in a hospital by requiring a hospital that permits a mother to store her milk for her own baby in a hospital refrigerator to undertake a lengthy, costly and complicated process to

obtain a tissue bank license. In California, there are currently only 26 facilities licensed to store human milk.

The Department of Public Health (DPH) indicates that breast milk is widely acknowledged to be the most complete form of nutrition for infants, with a range of benefits for infants' health, growth, immunity and development. The benefits of breastfeeding include decreased new cases or severity of diarrhea, respiratory infections and ear infections, and reduced cost for health care. In addition, breast feeding has been shown to improve maternal health, with demonstrated effects including reduction in postpartum bleeding, earlier return to pre-pregnancy weight, reduced risk of pre-menopausal breast cancer, and reduced risk of osteoporosis continuing long after the postpartum period.

DPH recommends that the County support SB 246 because it will remove an obstacle that discourages hospitals from allowing mothers of newborns to store their milk in hospital refrigerators, which will result in more mothers breastfeeding their infants human milk, and enhance the wellbeing of both the mother and her newborn, and we concur. Consistent with County policy to support measures which establish, enhance, or fund policies, programs, research, standards, education curriculum, and public awareness campaigns that encourage physical activity, healthy eating, breast feeding, availability of nutritious and safe foods, and reduce the prevalence of smoking and obesity, **our Sacramento advocates will support SB 246.**

SB 246 is sponsored by the California Hospital Association and supported by the American Academy of Pediatrics, American College of Obstetricians and Gynecologists District IX, California Women Infants and Children Association, California Association for Professionals in Infection Control and Epidemiology Coordinating Council, California Children's Hospital Association, California Nurse Midwives, California Medical Association, Kaiser Permanente Medical Care Program, Loma Linda University Children's Hospital, Maternal Child and Adolescent Health Action, Perinatal Advisory Council – Leadership Advocacy and Consultation, San Diego County Breastfeeding Coalition, Solano County Board of Supervisors, Sutter Health, and the University of California. There is no registered opposition. SB 246 passed the Assembly Health Committee on June 27, 2006 by a vote of 12 to 0 and is scheduled for hearing in the Assembly Appropriations Committee on August 9, 2006.

Status of County-Interest Legislation

County-opposed AB 1209 (Yee), which would have repealed certain medical treatment aspects of the workers' compensation reform enacted by County-supported SB 228 (Alarcon) in 2003 was amended on August 8, 2006, and now relates to microenterprise development. Consequently, **our Sacramento advocates will now take no position AB 1209.**

On August 7, 2006 the Senate Appropriations Committee sent the following County-Interest measures to its suspense file:

County-supported AB 1015 (Chu), which would create a Sex Offender Management Board;

County-supported AB 1056 (Chu), which would establish the Tolerance Education Pilot Program;

County-opposed AB 1368 (Umberg), which would exempt safety members from the workers' compensation reform that requires apportionment of job-related injuries;

County-supported AB 1799 (Umberg), which would require State reimbursement for the cost of special elections to fill legislative or congressional vacancies;

County-supported AB 2161 (Hancock), which would establish a pilot in five counties to merge processes for licensing and approving foster families and adoptive parents;

County-supported AB 2384 (Leno), which would create the "Healthy Food Purchase" pilot program; and

County-support and amend AB 2838 (Pavley), which would establish the Coastal Environmental Motor Vehicle Program and authorize a fee of up to \$6 upon the registration or renewal of every motor vehicle registered in one of the twenty counties for environmental projects.

We will continue to keep you advised.

DEJ:GK
JF:VE:MS:cc

c: All Department Heads
Legislative Strategist
Local 660
Coalition of County Unions
California Contract Cities Association
Independent Cities Association
League of California Cities
City Managers Associations
Buddy Program Participants